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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re GABRIELLA H. et al., Persons Coming  
Under Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

GERALD H.,

Defendant and Appellant.

B216225

(Los Angeles County  
Super. Ct. No. CK73613)

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn K. Martinez, Commissioner. Affirmed in part, reversed in part, and remanded with directions.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and Judith A. Luby, Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Gerald H., the presumed father of five minor children,<sup>1</sup> appeals from the exit order the juvenile court made when terminating its jurisdiction over the children. Father contends that the court abused its discretion in granting mother, Mary H., sole legal custody and in failing to properly regulate father's visitation. We hold, while the order granting mother sole legal custody of the children was not an abuse of discretion, the visitation order was. Accordingly, we reverse the exit order for the limited purpose of determining the amount of monitored visitation father should have. In all other respects the order terminating jurisdiction is affirmed.

## FACTUAL AND PROCEDURAL BACKGROUND

### *1. The family history and detention*

The family originally came to the attention of the Department of Children and Family Services (the Department) after father hit Gina with a belt, causing a welt. When adult sibling Giovanna tried to protect Gina, she was hit on the chin and hand. Gabriella and Gina grabbed their brother Andrew and locked themselves into a bedroom. Giovanna called the police, as she had after many similar incidents in the past. A responding deputy sheriff found a two inch wide by five inch long red mark on Gina's back. Gina appeared to the deputy to be so scared she was shaking. Deputy sheriffs have responded to similar calls from this house five times in the previous year. The family has also had a number of referrals to the Department beginning in 2006.

Father has an extensive criminal history including spousal abuse, child cruelty, and possession of a firearm. And, he has a serious problem controlling his anger. He was resistant to working with the Department. One social worker described father as "very aggressive" and "extremely hostile." During one briefing session in May 2008, father made threats against social workers. The social worker originally assigned to this family had complained that father had threatened her and so the Department removed her from the case.

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<sup>1</sup> The family consists of: Giovanna (adult), Gabriella (age 19), Gina (age 17), Andrew (age 14), and twins (age 2).

The Department filed a petition in July 2008. It then recommended, instead of a contested hearing, that the petition be dismissed and services and supervision be provided. (Welf. & Inst. Code, § 301.)<sup>2</sup> Father insisted on having an adjudication hearing.

## *2. The adjudication*

All of the family members, except father, commenced counseling. At the adjudication hearing, the juvenile court modified and sustained the petition finding true the allegations that father abused Gina; mother failed to protect Gina from father's abuse; father has a history of domestic violence; and the abuse of Gina put the other children at risk of similar abuse. The court declared the children dependents pursuant to subdivisions (a), (b), and (j) of section 300.

As father had ceased living with the family, the court ordered family maintenance services for mother. The court found clear and convincing evidence the children were at risk unless removed from father's custody, and ordered the children removed from father and placed with mother. As mother had completed a parenting course, she was not ordered to attend that class again. The court also ordered family reunification services for father to include low-or no-cost domestic violence counseling, individual counseling with a licensed therapist, anger management therapy, and parenting classes. The court allowed father monitored visitation with a Departmentally approved monitor, other than mother, and ordered that no corporal punishment would be tolerated.<sup>3</sup>

## *3. The order terminating juvenile court jurisdiction*

By the time of the disposition hearing, both parents had remained separated and declared their intention to file for divorce. The children were doing well with mother.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise noted.

<sup>3</sup> Father appealed from the jurisdictional order. That appeal was dismissed as abandoned. (*In re Sade C.* (1996) 13 Cal.4th 952.) Father then sought rehearing which motion was denied.

Mother and the three oldest minors were in individual and joint therapy, all of the children were doing well in school, and none posed a problem there.

However, father had participated in no court-ordered services. He told the Department on several occasions that he would not participate because he was appealing the jurisdiction ruling, and could not afford the services. Nor had father visited the children. He claimed scheduling conflicts and inability to pay for a private monitor.

Mother wanted the case closed. With father out of the house, the children were more relaxed. The Department recommended, pursuant to section 364 for mother and 366.21, subdivision (e) for father, that the juvenile court terminate jurisdiction and grant the parents joint legal and mother sole physical custody of the children, and order that father's visits be monitored. Father opposed closing the case if the court gave mother sole legal custody of the children.

After a contested hearing, the juvenile court found that mother was in full compliance with the case plan and had made "very good progress" in addressing the issues that brought the children before the court. The court found mother was taking good care of the children who were no longer at risk. As for father, the court found he had not complied with the case plan and indeed told the court he did not intend to comply, despite the Department's referrals for no-cost services. It also found that father had not maintained contact with the children and took no responsibility for the issues that brought the children before the court. On those findings, the court terminated its jurisdiction and ordered the children placed in mother's legal and physical custody and to reside with her. The court granted father monitored visits, "arranged by the mother . . . ." Father's appeal ensued.

### CONTENTIONS

Father challenges the juvenile court's order (1) granting mother sole legal custody; and (2) failing to define father's right to visitation.

## DISCUSSION

Father contends that the juvenile court erred in failing to grant him joint legal custody of the children. The Department takes no position as to this contention. We disagree with father.

When the juvenile court terminates jurisdiction in a dependency case (§ 364), it may issue an order for custody of and visitation with the children. (§ 362.4; *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203; see also *In re John W.* (1996) 41 Cal.App.4th 961, 970, fn. 13 [explaining the term “exit order”].) Such orders are commonly referred to as “exit orders” and remain in effect until modified by a family law court. (*In re John W.*, *supra*; § 302, subd. (d).) In making exit orders, the juvenile court’s focus is on the best interests of the children (*In re Chantal S.*, *supra*, at p. 206), in the context of the particular facts and circumstances of the case. (*In re John W.*, *supra*, at p. 965.) The court has broad discretion to determine what best serves a child’s interests and such decision will not be reversed absent a clear abuse of discretion. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) We may not disturb that order unless the court “ ‘exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’ ” [Citations.]” (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.)

Citing the Family Code, father observes, although there is no presumption in favor of joint legal custody in family law, “there must be profound reasons to deprive a parent of any rights in the future education of his children and to deprive him of any meaningful say in medical and other life-and-death decisions.”

“The juvenile court makes its custody determination ‘*without any preferences or presumptions.*’ [Citation.]” (*In re John W.*, *supra*, 41 Cal.App.4th at p. 972.) This is because “ ‘[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases’ decided in the juvenile court. [Citation.]” (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 201.) Juvenile courts hearing dependency cases under section 300 are handling children who have been abused, abandoned, or neglected and so juvenile courts stand as *parens patriae*, having a special responsibility to those

children. (*Ibid.*) For this reason, there are basic differences between juvenile dependency and family law in custody matters that go to the applicable standards the courts employ. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712; accord, *In re John W.*, *supra*, at p. 971.) The juvenile court determines the best interests of the child; in family law, it determines “the best interests of the child *as between* two parents. [Citations.]” (*In re John W.*, *supra*, at p. 971, citing *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) More important, the family law courts operate with the presumption that both parents are fit whereas the juvenile court does not. (*In re Jennifer R.*, *supra*, at p. 712.) Children are in the juvenile court exactly because of the abuse or neglect by at least one parent. The juvenile “court is *not* required to apply a per se rule that the child’s time must be split in half as long as neither parent poses an active threat.” (*In re John W.*, *supra*, at p. 965, italics added.)

Here, from the perspective of the best interests of the children, the order granting mother full legal custody was not an abuse of discretion. After six months of dependency, the Legislature has declared that the court sitting in dependency must order the children returned to the physical custody of his or her parent unless the court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (e).) The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return of the child would be detrimental. (*Ibid.*) The record here shows that father did not comply with his case plan at all. In fact, he declared his intention not to even try to comply. He claimed this was because he was appealing the jurisdiction order, but he abandoned that appeal. (*In re Sade C.*, *supra*, 13 Cal.4th 952.) He also blamed his failure on penury, but the Department gave him referrals for low and no-cost services. As the result of father’s intransigence, he made *no* progress whatsoever treating his belligerence, violent behavior, hostility, inability to control his anger. His failure to control his behavior in court was palpable evidence of father’s difficulties. Father has not begun to learn how to treat his children. There is prima facie evidence that

return of the children to him would put them at risk. Meanwhile, the children are in therapy and are doing well in school with mother making the decisions for them. The children have relaxed since father moved out of the house and his influence over them is no longer felt. Although father claims he should have a say in his children's education, he admitted in court that he abandoned the children in the past for up to a year at a time. That is, he has already relinquished his control over these children, most of whom are adults or in high school, in any event. In short, the court did not act arbitrarily or capriciously but instead identified a risk to the children if returned to father's custody and determined it would not be in the children's best interest to award father shared legal custody of them. In the context of this case, the children's best interests are served by an order granting mother sole legal custody.

We observe that father has not been prejudiced by, nor have his fundamental rights been affected by, the juvenile court's order terminating jurisdiction. Custody orders are modifiable. Section 362.4 provides that "Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court."

Father also objects to the visitation order made as part of the exit order. Father contends that the juvenile court erred in failing to specify the frequency of visitation. We agree.

As noted, section 362.4 vests the juvenile court with broad discretion to make visitation orders when terminating its jurisdiction. (*In re Chantal S.*, *supra*, 13 Cal.4th at pp. 213-214.) Nonetheless, the juvenile court must regulate visitation. (*In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476.) "To satisfy this responsibility, a court must 'define the rights of the parties to visitation.' [Citation.] The court may delegate 'ministerial tasks of overseeing the right [to visitation] as defined by the court' . . . ." (*ibid.*), but it must nonetheless define that right.

In its order terminating jurisdiction, the court stated: "*Any* visits by the father shall be monitored as arranged by the mother who has the full legal and physical custody." (Italics added.) This order failed to specify the amount of visitation to which father would be entitled. Although in the proper case, the juvenile court has the

discretion to simply deny a parent any visitation (see *In re Chantal S.*, *supra*, 13 Cal.4th at p. 214), that is not what the court did here. Rather, the court suggested that father could visit the children, while at the same time its use of the word “any” in its order suggests that the court was delegating to mother the power to bar father from visiting his children all together. This failure to define father’s right to visitation and improper delegation, therefore, was an abuse of the juvenile court’s discretion. (*Bridget A. v. Superior Court*, *supra*, 148 Cal.App.4th at p. 300.)

#### DISPOSITION

The portion of the termination order pursuant to section 362.4 granting father visitation is reversed and remanded to the juvenile court to make visitation orders in accordance with the views expressed in this opinion. In all other respects, the order is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, ACTING P. J.

KITCHING, J.